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Subject:

Criminal Appeals in the High Court of Bombay against the orders of acquittals from Dharwar Dist

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Judgment recorded by the High Court in Criminal Appeal No. 466 (By Government) in the case of Imperator V. Lalya Nandya

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The Assistant Government Pleader for the Government of the Province of Bombay.

Mr. P.V.Vaze, Advocate for the accused (appointed).

.....

Coram: Bavdekar and Dixit, JJ.

16th May 1947.

Oral Judgment (Per Dixit, J.):-

This is an appeal by Government of the Province of Bombay against the acquittal of the accused in respect of offences punishable under ss.354 and 394 of the Indian Penal Code. The learned Honorary Magistrate, First Class, Gadag, who tried the case took the view that the evidence led on behalf of the prosecution was most discrepant and that no crime had been made out against the accused with tangible evidence to warrant the conviction, and so he made an order acquitting the accused. For reasons which I will mention presently that view is wrong.

The complainant is the wife of one Fakirappa. Fakirappa's uncle Satteppa has cattle which she takes to the field for grazing. The accused is in the permanent service of one Gulappa who owns fields and garden. Gulappa's house is four or six houses from the house of the complainant. On December 31, 1945 the complainant took out the cattle for grazing when along with her were two women named Basawa and Malakswa It is alleged in the complaint that in the evening of that day the accused came from Tanda side when the accused began beating the complainant with a stick, shut up her mouth, made her fall down and threw her in the wire fencing after removing her Sari and Choli. It is further alleged that he tore her Talisara, which is the same thing as necklace, and gave her his own turban t

turban to wear, that a boy ca-me running and, on seeing the boy, the accused ran away and that after her return to her residence in the evening she informed her husband of what had happened.

Upon these facts the charge against the accused was that he on or about the 31st day of December 1945 at Yelishir und at about sunset in the garden of Koppad Gulappa lifted and threw the complainant Tippawa, snatched her Siri and Kubasa and tore her Tali-sara and dragged her by her hand with intent to outrage her modesty as well as to commit robbery, caused hurt by beating with a stick.

In support of the prosecution case there is a good deal of oral evidence.In the first instance, there is the evidence of the complainant.Her evidence is that at about 10 or 11 a.m. she had taken her husband's uncle's cattle to the field for grazing, that Basawa and Malakawa were with her, that the accused came from his Tande side at about sunset time,that the accused lifted her and threw her in the garden beyond the wire fencing, that he removed her Siri and Kubasa,/that some Tali-Samana fell to the ground and some remained in his hand, that while this was happening Sivangouda came there and took his to his house, that when Sivangouda came the accused left her and that she went home wearing the Dhotara. In cross-examination some questions were asked her as to whether or not her Siri and Kubasa were torn and so on. But the story which she gave in the examination-in-chief was not shaken.In support of her story we have next the evidence of Basawa,who was one of the two women who too had taken out cattle for the purpose of grazing. Her evidence is this; By about sunset the accused came from Tanda side to the place where the cattle were grazing, that he began to drag Tippawa by holding her hand, that he after lifting her threw her in the hedge,that thereafter she

thereafter she returned home leaving the cattle there and that on the way she met Bharamawa to whom the incident was narrated. Next, we have the evidence of Malakawa who says that while they were grazing cattle the accused came and began to pull T-ippawa by holding her hand and that when the complainant protested the accused her and threw her beyond the hedge. In the cross-examination there is an important statement which is perhaps worth quoting;"Accused said why you had come in our field with cattle get away.Tippawa said she will not go.She had kept her cattle in the mid fiedd.He holding her hand pushed her outside the field.Therefore she weeping went home and we also being afraid went home. " Sivangouda, who has been referred to in the evidence of the complainant, in his evidence says that while he was returning home from his garden he saw the accused lifting and throwing Tippawa in the field of Koppad Gulappa, that she was, at that time, wearing a Dhotara, that she had no Siri and Kubasa on, that she fell at the feet of the witness and said that if the witness had not come there the accused would have carried and taken her away. He has been cross-examined by the accused and nothing is suggested as to why Sivangouda is not a truthful witness.Next in point of time is the evidence of Bharamawa. She was not present at the spot where the incident took place. But she saw Basawa and Malakawa coming to her, weeping.She asked them as to what the matter was and they said that they had gone out for grazing,cattle, that the accused lifted the complainant, threw her in the wire fence and so they came back weeping.She saw the complainant with the Dhotara on. She further says that shortly thereafter the accused also came there in the company of Kotrappa and that the Kotrappa took the accused in the village.Kotrappa has been examined in this case and his evidence is that while he was

while he was going to his garden in the evening he found on his way Bharamawa abusing the accused.He enquired of Bharamawa as to what the matter was, when the latter said that the accused had snatched the Siri and Kubasa of Tippawa.Kotrappa enquired of the accused whether it was true and the accused said that he was wrong in doing so. He says that at the time when this happened the complainant had a Dhotar on. He says that he took the accused to the Patil to the Chavadi.It appears from the evidence of the Police Patil Doddgouda that the accused was taken to him by Kotrappa.He says in his evidence that Kotrappa brought the accused to him, that Kotrappa told the Police Patil that the accused had snatched Siri and Kubas of Tippawa and had kept them in the hedge in shrubs and had torn her Tali-sara.He further says that the accused admitted the facts and prayed to be excused.His evidence further shows that at the time when Tippawa and her husband came to him. Tippa-wa had no Sari on, but had only a Dhotara.His evidence also shows that next morning Tippawa's husband went to him in the company of his wife and a complaint was filed which he recorded.We have also the evidence of Fakirappa, who is the husband of the complainant.He says that on that day he had gone out for work of one Basappa Halli in the morning,that he returned home sunset time, that after he returned home he found his wife weeping, that he enquired of her, when the wife told him that the accused had thrown her in the garden, had removed her Siri and Kubasa and that when Shivangouda came the accused released her. There is also the evidence of Dya-mava, who is the wife of Bateppa, whose cattle the complainant had taken out on the day in question for the purpose of grazing.She says in her evidence that the cattle are grazed by Tippawa, that Tippawa returned to her place at about sunset

sunset time; that she had a Dhotar on,that when accosted the complainant sais that accused Lalya had beaten her and snatched her Siri and Kubasa and had torn the Tali-sara.

This is the important oral evidence in the case. Besides this evidence, we have also the evidence of the Police Constable Shankar who says in his evidence that on January 2, 1946 he was entrusted with the work of investigation in the case, that he examined the complainant, took down the statements of Basawa, Malekawa, Sivangouda and Bharamawa, that he enquired of the accused regarding the crime, that the accused admitted the guilt to him and that thereafter he handed over the case papers to the Police Sub-Inspector.The Police Sub-Inspector has been also examined in the case at Ex. 14, but his evidence is more or less of a formal nature.There is the evidence of the panch Fakirappa who proves the four panchnamas produced in the case. There is the panchanama in respect of the Tali-sara and the panchnama says:

" We inquired Lalya about the property.He produced stating that was the Tali-Sara torn by him from the neck of Tippawa in which one red-stone-Badaka, one sada Pedaka, one Talita, 5 gold beeds and two talis are included in a string and in which there are also red and black manis all worth about Rs.15 which were attacned by the police patil before us and ta-ken in his custody."

Ex. 2-B is the panchnama regarding the Sari and the Kubasa which were found at the scene of the offence.It also refers to three gold beads, two padakas and one gold Talismen,and the price of the Sari is stated to be Rs.2.Ex.8-A is the panchanama regarding the dhoti, and Ex. 8-B is the panchnama regardin the necklace which says:

" The garden is surrounded by a wire-fence and als

and also shrubs have grown round about the garden.The place where the Guladali Sara (necklace) of the complainant was torn is the edge of the well.A coconut tree stands there. The canal of water runs close to it. We saw black manis 31 and red maniz 3 lying there.

The evidence of the Police Patil shows that when the accused visited him he had in his possession some of the Tali-sara belonging to the complainant.

This is the relevant evidence in the case.It is not possible to say precisely as to what the object of the accused was.The accused was in the service of Gulappa in whose garden or fiedd the cattle were apparently grazing.Naturally he took exception to the cattle grazing there and it is possible that he was to some extent justified in protesting that the cattle were allowed to graze there.It may be that his object was to push away the complainant out of the fiedd of his master. But in so doing we think he had no justification whatever to remove the Sari and the Kubasa which the complainant was wearing.He had equally no justification for throwing the complainant into the wire fence. It is alleged that he beat the complainant with a stick.The evidence shows that he had in his possession part of the necklace or Tali-sara. The fact that the accused removed the Sari and the Kubasa of the complainant cannot seriously be disputed because the evidence clearly shows that the complainant were the Dhotara when she returned home in the evening with the cattle.The fact that she was wearing a Dhotar is deposed to by herself, by Sivangouda, by Kotrappa, by Bh ramawa by Doddgouda, by Fakirappa and by Dyamaya. The explanation of the accused is that the Dhotar does not belong to him and the learned Advocate for the accused says that that was t fact. If that argument is to be accepted, it would mean that w

that we will have to disbelieve a good deal of oral evidence in the case. But we are not prepared to do so. We are satisfied that the explanation of the accused that the Dhotara did not belong to him is untrue because the sari and Kubasa were pressed at the scene of the offence. Besides, there is no reason why the complainant should have, if the explanation of the accused was true, removed her own Sari and Kubasa and put on the Dhotara of the accused. It is not suggested that the complainant had lodged a false case against the accused, and even if that be the suggestion, there does not seem to be any evidence to show that that suggestion could be supported.

The accused in his statement says that he was watching the field, that he told the complainant to get out of the field, that he abused the complainant, that thereafter the prosecution witnesses got angry, that he did not strip Siri and Kubasa, did not tear the Tali-sara and that he had not committed any crime. It appears from page 13 of the record that he cited two witnesses Hanmappa and Narayan. It also appears that those witnesses have not been examined. Of course, he is not bound to lead any evidence. It is for the prosecution to prove the case as put forward by the prosecution. But I am merely mentioning that circumstance as showing that if he had any defence to make on the strength of the evidence of the defence witnesses mentioned at page 13 of the record, that attempt he has not made.

The learned Magistrate in a remarkable brief judgment referred merely to the nature of the evidence in the case without making any serious attempt to discuss it or to make any comments upon it. He said that the evidence was most discrepant. It is mush to be wished that he had discussed it and shown how it was discrepant. Among other reasons he gave the reason that the crime was not proved by tangible evidence. I am unable to

to understand that reason.Probably, his view was that the case was too trivial to induce him to take any serious notice of it. If that was his view, we think he was clearly wrong. In the face of the evidence which has been led on behalf of the prosecution it is impossible to say that the offences charged against the accused have not been proved. The learned Judge does not say that the evidenceis not sufficient.He does not say that the evidence is not reliable . He does not say that the evidence is interested. In the absence of any reason to the contrary we must differ from its conclusion that the case has not been proved.There is no doubt that on the evidence we are satisfied that the act of the accused was high-handed.If the cattle grazed in his master's field,it was his duty to report the matter to the master. He could have, if he had wished,taken an appropriate action under the Cattle Trespass Act.If he had gently pushed the complainant aside nobody would have perhaps taken serious exception to his action.But when he pushed the complainant into the wire fence and removed the Sari and the Kubasa of the complainant he clearly exceeded the limits of the law.That being our view,we must set aside the order of acquittal.

The appeal must,therefore, be allowed and the order of acquittal set aside.The accused is convicted of the offences under ss.354 and 394 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months in respect of each of the two offences.The sentences shall run concurrently.

RJS/-
13-6-49.

JUDGMENT RECORDED BY THE HIGH COURT IN CRIMINAL APPEAL No. 72 OF 1947

(With Criminal Appeals Nos. 73 to 75 of 1947), by the Government of the Province of Bombay.

Imperator

versus

Balkrishna Ganpat Nadkarni No. 12.

The Government Pleader for the Government of the Province of Bombay, in all.

Appeal No. 72 of 1947: Counsel Mr. Purushottam Tricumdas with Mr. B. G. Pradhan, Advocate, for accused No. 12.

Appeal No. 73 of 1947: Mr. R. A. Jahagirdar, Advocate, for accused Nos. 1, 2, 7 and 9.

Appeal No. 74 of 1947: Messrs. G. P. Murdeshwar and U. S. Hattiangadi, Advocates for accused Nos 13 and 14.

Appeal No. 75 of 1947: Mr. R. A. Jahagirdar, Advocate, (appointed), for accused No. 11.

16th July 1947.

(Coram:—Sen and Gajendragadkar, JJ.)

Oral Judgment (Per Gajendragadkar, J.).—These appeals have been filed by the Government of the Province of Bombay, against the order passed by the learned Sessions Judge at Dharwar acquitting the accused of the offence charged. The material facts giving rise to these appeals are few and some of them are not in dispute. On the night of February 9, 1944, the Price Inspector at Ranebennur received information that contrary to the order issued by the Government of Bombay, some merchants from Ranebennur were exporting groundnut seeds to Harihar, a place in Mysore territory, and that one such attempt to export the groundnut seeds would be made on the same night. Acting on this information the Price Inspector along with two of his friends hired a special car and proceeded to the village of Kodiyal which is about 13 to 14 miles from Ranebennur and which is separated by a bridge over the Tungabhadra river from Harihar in Mysore territory. The distance between the two places is about a mile. On reaching Kodiyal at midnight the Price Inspector Mr. Joshi slept in a temple and instructed the Valikar of the village to be on the lookout. At about 5 a.m. on the 10th the Valikar noticed five carts arriving near the village. He woke up Mr. Joshi and informed him about it. Thereupon the Police Patil was sent for and some *panchas* were collected. In the company of this party Mr. Joshi went on the main road and found that five carts had arrived. On inquiry he learnt that they were bound for Harihar and were carrying bags filled with groundnuts, whereupon he stopped the carts, counted the bags in them and made *panchnamas*. It was discovered that the said bags belonged to accused Nos. 1 and 2. Meanwhile another batch of 31 carts arrived on the scene. They also contained groundnut seeds. A similar procedure was adopted with regard to these carts: The bags in them were counted and *panchnamas* were made. The bags in these carts were discovered to belong to accused Nos. 1 to 3. After the *panchnamas* were thus made the Price Inspector attached the bags. Some of the cartmen refused to give their names. The cartmen were asked to take the carts with the goods to the *chavdi*, but they refused. Mr. Joshi delivered the attached goods into the custody of the Police Patil of Kodiyal. The Police Patil instructed the Valikar to be in charge of the carts and not to allow them to proceed to Haribar. He then returned to his village. These carts were accompanied by two Police Constables, accused Nos. 13 and 14, and some of the other

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accused. While Mr. Joshi was making arrangements about the bags in these carts these Police Constables asked Mr. Joshi to allow the carts to proceed since their Rao Saheb (meaning presumably the Sub-Inspector, accused No. 12) had permitted the said carts to go to Harihar. After Mr. Joshi and the Police Patil returned to their respective places the Valikar remained in charge of the attached goods. The Police Patil had gone to Harihar to fetch some medicine for his ailing child at about 5 p.m. and returned from there at about 8-30 p.m. In the meantime the Police Sub-Inspector of Ranebennur Mr. Nadkarni, accused No. 12, and the Sheristedar of the Mamlatdar of Ranebennur Mr. Badkar, accused No. 11, arrived at Kodiyal at about 7 p.m. with a Constable and some other merchants. The Valikar was told by them to allow the carts to proceed to Harihar and on his refusing to obey Nadkarni and Badkar told the Valikar that they had deliberately come in person and would explain the position to the Police Patil. As a result the Valikar allowed the carts to proceed. The carts were loaded, bullocks yoked, and then they went to Harihar. On the way before they crossed the bridge they were stopped by the clerk at the Check Naka; but accused No. 12 persuaded the said clerk to allow the carts to go ahead. Eventually the carts went to Harihar where the goods were sold. When the Police Patil returned to Kodiyal at night he was told by the Valikar as to what had happened. The next day in the morning the Police Patil wanted to go to Ranebennur to report this incident, but he missed the train. He then went to Harihar about 10 or 11 a.m. and managed to send a telegram to the Price Inspector informing him that at the instance of the Sub-Inspector and the Sheristedar the goods attached by him had been allowed to go into the Mysore territory. Mr. Joshi had reported this incident to the Mamlatdar, but the Mamlatdar had asked him first to secure permit from the Assistant Collector for rice distribution since that was a more important matter. Mr. Joshi had, therefore, to go to the Assistant Collector's camp on the 11th and secured the necessary permit late in the afternoon. When he returned with the permit to Ranebennur he got the telegram from the Police Patil. Thereupon he prepared a report about the incident and wanted to deliver it to the Mamlatdar Mr. Bapat, along with the *panchnamas* and the other documents. But Mr. Bapat was absent and from the 12th until the 15th Mr. Joshi himself was ill. Thus it was on the 15th that Mr. Joshi gave his report and the papers to Mr. Bapat. Mr. Bapat was then in a hurry to go to the villages and did not read the report until the 17th. On the 18th the Assistant Collector who was camping at Ranebennur received a pseudonymous application about this incident. He went to Kodiyal, recorded some statements and on returning to Ranebennur asked Mr. Bapat about it. The Assistant Collector Mr. Bam informed Mr. Bapat that he had made some inquiries already and was sending his own report to the Collector. He asked Mr. Bapat to send his own report and the papers to the Collector directly. Accordingly on the 19th Mr. Bapat sent his own report, Mr. Joshi's report and the papers accompanying it to the District Magistrate. On receiving these papers the District Magistrate directed the District Superintendent of Police to inquire into the matter on the 22nd. Mr. Joshi was accordingly examined by the District Superintendent of Police on the 23rd and the investigation commenced. Afer he carried on the investigation for some time he entrusted it to his Assistant on the 26th who carried it on until the 13th of March. Meanwhile it was thought desirable that the matter should be left in the hands of the C. I. D., and the Deputy Inspector General, C. I. D., ordered that Mr. Kulkarni, the Deputy Superintendent of Police, C. I. D., should take up the investigation. Mr. Kulkarni commenced his investigation on the 18th and eventually sent a charge-sheet against 15 persons on the 18th of August 1944. In July pending the investigation Mr. Kulkarni had arrested all the accused and released them on bail. Amongst the accused were merchants from Ranebennur and their clerks. These were charged with having exported groundnuts and groundnut seeds out of British India contrary to the orders issued by the Government in that behalf. It was alleged that as a result of this illegal export these accused were guilty of an offence punishable under

ule 81 (4) of the Defence of India Rules. Besides these merchants the heristedar, the Sub-Inspector of Police and the two Police Constables were lso charge-sheeted the case against them being that they had abetted the ommission of the main offence and had thus rendered themselves liable for unishment under rule 81 (4) read with rule 121 of the Defence of India ules. Besides, all the accused were charged with having committed an ffence punishable under Section 379, read with Sections 114 and 109 of the ndian Penal Code. Out of these 15 persons the learned Sub-Divisional Magistrate, First Class, Dharwar City, who heard the case discharged ccused Nos. 3, 4, 10 and 15. Accused Nos. 1, 2, 7, 9, 11 and 14 were onvicted of the offence under rule 81 (4), whereas accused Nos. 11, 12, 13 nd 14 were convicted of the offence under rule 81 (4) read with rule 121. The learned Magistrate imposed a fine of Rs. 800 on accused Nos. 1, 2 and 12 nd of Rs. 400 on accused Nos. 7, 9, 11, 13 and 14. He directed that in lefault of payment of fine each one of the accused should undergo rigorous mprisonment for four months. As regards the other charge under ection 379 of the Indian Penal Code, it was held by the learned Magis- rate that Mr. Joshi was not authorised to levy the attachment and the harge under that section could not, therefore, be sustained. Accordingly ie aquitted all the accused of the said charge. I should have mentioned hat all the accused had pleaded not guilty to the charge. Excepting the ub-Inspector all of them had denied knowledge of the order. The validity f the order was also impeached by all of them and the fact of export was lso not admitted. The learned Magistrate was, however, not impressed vith the defence and held that the prosecution case had been proved. Against the order of conviction passed by the learned Magistrate appeals vere preferred by the respective accused persons and the said appeals were eard by the learned Sessions Judge at Dharwar. The learned Sessions Judge was disposed to take the view that the prosecution had not proved that ny order was passed by Mr. Gorwala as alleged by them and that the require- nents of rule 119 of the Defence of India Rules had not likewise been omplied with. Since the very order which was the foundation of this rosecution had not, according to the learned Sessions Judge, been proved, ll the appellants were entitled to an acquittal on that ground alone. How- ver, he dealt with the merits of the case of each one of the appellants efore him. In dealing with the merits the learned Sessions Judge was of he opinion that it would not help the prosecution to bring home the offence o the accused even if they showed that the accused had knowledge of the rder in question because he thought that unless the requirements of rule 119 were complied with the order could not be legally enforced and its breach annot amount to the commission of an offence. As to the merits he held that he case against accused Nos. 1 and 2 had been proved, but not against ccused Nos. 7 and 9. He also held that the case against the Police Officers, iz. accused Nos. 12, 13 and 14 was false, whereas though the facts alleged gainst accused No. 11 were substantially proved the conduct of accused Jo. 11 did not disclose the intention to commit an offence and in that view he case against him also must fail. However, since he had found that the ery order alleged to have been violated was not shown to have been made, he cquitted all the accused. That is how the Government of the Province of Bombay have filed the present appeals against the order of acquittal.

It may be mentioned at the outset that the learned Government pleader as not pressed his appeals against accused Nos. 7 and 9. He has also onceded that on the evidence adduced by the prosecution it would be difficult o challenge the finding of the learned Sessions Judge that the requirements f rule 119 of the Defence of India Rules have not been complied with. He as, however, contended that the learned Sessions Judge was wrong in inding that the order had not been made by Mr. Gorwala and that the rosecution must fail if they do not show that rule 119 had been complied vith. Assuming that the order was made by Mr. Gorwala, it seems to us hat the learned Sessions Judge was wrong in holding that failure of the rosecution to prove that the order was published and that the requirements

of rule 119 were complied with would be fatal. It has been held by this Court in *Emperor* v. *Rayangouda Lingangouda*, (1944) 46 Bom.L.R. 495 :–

> " Where in fact the individual concerned knows perfectly well tha an order has been passed against him and acquires his knowledge by other means, it cannot be said that he has not received notice of the order merely because notice is not given to him in the form prescribed by rule 119."

Dealing with the provisions of rule 119, Macklin J., pointed out that the consequence of failure to carry out the provisions of the said rule is practical rather than legal. As a consequence of the failure to carry out the said provisions the prosecution loses a simple method of establishing beyond controversy that the person affected had received notice of the order affecting him, and the said person will find it easier to establish the fact that he had not received notice. The learned Sessions Judge has referred to the decisions of the Madras, Allahabad and Nagpur High Courts, and curiously enough preferred to follow the view expressed in those decisions in support of his conclusion that " in law it is immaterial if a person gets knowledge of an order in a certain manner if that manner is not the one prescribed by the authority passing the order ". That is why the learned Sessions Judge did not discuss the question as to whether each one of the accused was shown to have had knowledge of this order by other independent evidence. In view of the decision in *Rayangouda's* case, however, it is obvious that the conclusion of the learned Sessions Judge must be held to be wrong. In other words, if the prosecution prove that the order was made by Mr. Gorwala it would be open to them to establish the knowledge of each one of the accused by other evidence, even though the requirements of rule 119 may not have been complied with. Thus the main questions which arise for decision in these appeals are: Was the order made by Mr. Gorwala as alleged by the prosecution? Did the prosecution prove that each one of the accused had knowledge of the said order? Do they prove that contrary to the provisions of the material order groundnut seeds were removed out of British India? and if yes, Which one of the accused either transported or abetted the said transport of the said goods in question?

The order in question was published in the *Bombay Government Gazette*, Extraordinary, on Tuesday the 28th September 1943, by authority. In effect it prohibited the transport of groundnuts or groundnut seeds by rail, road or sea from any place within the limits of the Province of Bombay to any place in India outside the said limits as from the 30th September 1943 except under and in accordance with the conditions of a licence granted by the District Magistrate concerned. Under this order no licence was necessary for the carrying of any of the said articles not exceeding 10 lbs. as part of his personal luggage by *bona fide* traveller. The order was passed by order of the Governor of Bombay and was signed by Mr. A. D. Gorwala, Secretary. It is not disputed that by rules of business Mr. Gorwala was authorised to sign such orders, the only point in dispute being whether Mr. Gorwala had signed the order before it was published in the *Government Gazette*. This point was not taken before the learned trial Magistrate and naturally enough the prosecution sought to prove the order by producing the relevant copy of the *Bombay Government Gazette*, Extraordinary. Before the learned Magistrate the prosecution examined two witnesses from the Secretariat in support of the case which they then made that the said order had been duly published as required by rule 119. In the cross-examination of these witnesses questions were mainly asked about the publication and the requirements of the said rule and the learned Magistrate found in favour of the prosecution on that point. It was in appeal that this question was raised for the first time and the learned Sessions Judge was persuaded to hold that there was no order passed by Mr. Gorwala as suggested by the prosecution. In recording his finding, however, the learned Sessions Judge completely overlooked the provisions of Section 78 of the Evidence Act. The order in question is obviously a public document and under the provisions of Section 78 (*1*) such orders of the Local Government or of any department of such Local Government may be proved by the production of any

document purporting to be printed by order of any such Government. The *Bombay Government Gazette* was such a document and *prima facie* its production entitled the prosecution to ask the Court to assume that an order as printed was made by Mr. Gorwala. Indeed, that is the normal way in which such orders are proved. It may be open to the accused to contend that no order was in fact passed as alleged and the publication in the Government Gazette is a result of a mistake, fraud or misrepresentation. But it is clear that it would be for the accused to rebut the presumption arising under Section 78 (*1*) on the production of the Government Gazette. Since it is open to the prosecution to prove the order by the production of the Government Gazette it would be unreasonable to call upon them to produce the original order straightaway. As I have already stated no such request was in fact made in the Court of the trial Magistrate and this point was in fact not raised at all. The learned Sessions Judge, however, thought that some of the answers given by Mr. Devaras from the Secretariat justified the finding that no order was in fact made or, at any rate there was some doubt as to whether such an order was made. Mr. Nargolwalla, another witness from the Secretariat, gave some evidence, but it is not very material because he was not personally aware of what happened before or at the time of the publication of this order. The main evidence was that of Mr. Devaras. In order to substantiate the prosecution case that the order had been published as directed by Mr. Gorwala certain correspondence preceding the publication of the order was produced by this witness and on the strength of the said correspondence this witness had stated that an endorsement initialled by Mr. Gorwala on 18th September 1943 in the said correspondence showed that he had authorised the publication of the order in a particular manner as required by rule 119. He had, however, mentioned in cross-examination that " the office copy of the published order signed by Mr. Gorwala is not maintained ". Mr. Purshottam has suggested that this sentence means that no copy was signed by Mr. Gorwala before it was sent to the press for publication in the Government Gazette. We are unable to accept this suggestion. It seems to us on the other hand that the witness clearly implied that the office copy had been signed by Mr. Gorwala but that after it was published in the Gazette it may have been destroyed. Throughout the cross-examination of this witness no attempt was made to suggest that before the order was sent for publication in the Gazette, Mr. Gorwala had not duly signed it. *Prima facie* Mr. Gorwala must have signed the order since the Government Gazette shows his signature. Apart from the presumption arising under Section 78 of the Evidence Act we are quite satisfied that the learned Sessions Judge was wrong in holding that the evidence of Devaras justified his finding that no order was made. We do not think that on that evidence even a reasonable doubt arises as to whether Mr. Gorwala had signed the order. That being our view, we must proceed to deal with the matter on the basis that an order had been duly made by Mr. Gorwala.

The next question which arises for decision is, Has it been shown that each one of the accused had knowledge of this order at the material time? In this connection it is necessary to remember that if the prosecution prove the circumstances under which the transport of the prohibited goods took place on the 10th of February from Kodival to Harihar it would not be difficult to infer that all the accused concerned with the said transport had knowledge of the fact that the goods had been attached—may be without authority—by Mr. Joshi expressly on the ground that the transport of the goods was prohibited by the Government order in question. The transport was effected notwithstanding the said attachment, and, if the prosecution case is to be believed; the Valikar and the Naka Karkun were persuaded to allow the transport by accused Nos. 11 and 12 under the cloak of their official authority. Accused No. 12, the Sub-Inspector, does not deny that he had knowledge of this order. His subordinates, the two Constables accused Nos. 13 and 14, can, in our opinion, be fixed with the knowledge of this order because in ordinary course they are expected to know the order from the Sub-Inspector and as I have already stated if the part which they are alleged to have taken in the transport of these goods is believed it would

leave no room for doubt that they fully knew that but for the help of the Sub-Inspector the goods could not have been lawfully transported to Harihar. It is very probable that they knew about this order and their conduct, if proved, would make it certain that they knew about it. In the case of accused Nos. 1 and 2, besides their conduct there is the evidence of the report made by the Mamlatdar on the 19th February after the Mamlatdar received Mr. Joshi's report in which Mr. Joshi had set out the facts about the attachment of the goods; he had also mentioned the names of the merchants to whom the goods belonged. Amongst these merchants were accused Nos. 1 and 2. The Mamlatdar naturally called these merchants for their explanation. Thereupon they admitted that they had taken groundnuts to Harihar, but that they did so only to bring oil crushed in the oil pressing mill at Harihar and that they had undertaken to satisfy the Head Karkun that they would bring oil of those seeds and that they would do so within a few days. In this report the Mamlatdar also added that he had inquired with the Head Karkun about this incident and had been told by the Head Karkun that the merchants had made representation as alleged by them. While the Mamlatdar gave evidence in this case he referred to this incident and swore that this explanation had been given to him by the merchants concerned. However, he was not prepared to identify the said merchants as accused Nos. 1 and 2 on the ground that he did not know them before and was unable to identify them even if they were shown to him. The position of the Mamlatdar in this case is somewhat curious. While the investigation started he was himself not sure whether he would be called upon to give evidence as a witness in the case or would be shown as an accused. In fact his name was apparently shown in the charge-sheet in the first instance. The delay made by him in making his report and the manner in which he has given evidence in this case seem in our opinion to justify some of the criticism made by the learned Sessions Judge against this evidence. He claims to have been very diligent about the threatened transport of the prohibited goods on the 9th of March. He says as soon as he learnt about it he took steps to instruct the Circle Inspector and the Sub-Inspector to prevent the said transport and in fact the carts going to Harihar were brought back. In support of this story evidnce has been given by Chamansab, Fakirgouda and the Circle Inspector Mr. Jadhav. The learned Sessions Judge was not impressed with the evidence of these witnesses. He was disposed to think that this evidence was introduced just to make it appear that the Mamlatdar was diligent in the discharge of his duties. We are not prepared to hold that this evidence is necessarily unreliable, though we do not think that the Mamlatdar was really very diligent in the matter of prohibiting the transport of the goods to Harihar. But whatever may be said about the conduct of the Mamlatdar and his unwillingness to identify accused Nos. 1 and 2 in his evidence, we see no reason to doubt the genuineness of the statements made by him in his report forwarded on the 19th February. Thus the explanation which accused Nos. 1 and 2 gave to the Mamlatdar clearly proves that they knew that the transport of groundnut seeds was prohibited. Accused No. 11's case is even worse. The report of the Mamlatdar to which I have just referred shows that he confirmed the explanation given by the merchants to the Mamlatdar. It is true that he challenged the veracity of the statements made in the Mamlatdar's report by another statement which he made the next day before the Assistant Collector. In this statement he denied that he had allowed any merchant to transport groundnuts even on the allegation that they would be converted into oil at Harihar and the oil would be brought back to Ranebennur immediately. In this statement accused No. 11 has given his version about the incidents that took place in the evening of the 10th of February. He said that the Sub-Inspector came to his house at about 7-30 and requested him to have a drive with him in the car; that he and the Sub-Inspector as well as two Police Constables went in a car to Kodiyal where carts laden with groundnut bags were standing. Thereupon the Constables got down from the car and consulted the Valikar who was standing by the carts. Eventually the cartmen tied the bullocks and the carts passed the bridge. He further

says: "The Police Sub-Inspector, and myself sat under a tree and the car went to Harihar for petrol and after about an hour we returned." In our opinion this statement represents the incidents of the evening substantially correctly, though it is clear that an attempt has been made to mitigate the part played in this affair by the Sub-Inspector and accused No. 11 himself. We are, however, not prepared to attach any value to the statement made by accused No. 11 in this document challenging the correctness of the statements made in the report of the Mamlatdar. It seems to us that the said statements and the subsequent conduct of accused No. 11 in going to Kodiyal along with accused No. 12 leave no room for doubt that he knew that the transport of groundnut seeds was prohibited by the Government order.

The material facts as to the transport of the prohibited goods to Harihar are not in dispute and have indeed been proved by abundant evidence. The evidence of the *panchas* and the *panchnamas* and that of Mr. Joshi, the Police Patil, the Naka Karkun and the Valikar clearly shows that the carts laden with bags containing groundnut seeds were attached in the morning and were allowed to proceed to Harihar in the evening. In fact the transport of these goods was not disputed in the Courts below and has not been challenged before us. The evidence of the Toll Clerk across the bridge in the Mysore territory also shows that the carts did go to Harihar. That being so the material question to consider is: Which of the accused transported these goods or abetted the said transport? The oral evidence on which the prosecution rely to prove their case against each one of the accused must, therefore, be examined.

The first witness is the Price Inspector Mr. Joshi. He narrates the incident as it took place on the morning in detail and his evidence is supported by that of the *panchas* and the *panchnamas*. He was not present in the evening and does not speak about the incident of the evening from personal knowledge. He refers to the presence of accused Nos. 13 and 14 in the morning and says that these accused approached him and told him that their Rao Saheb, meaning the Sub-Inspector, had asked him to allow all the carts to go to Harihar. This witness had not mentioned the names of the Police Constables during the early stage of the investigation because he says it did not occur to him that he had seen the two Constables accompanying the carts for escorting them. He denied that he wanted to shield them at any stage. Against the evidence of this witness the main criticism levelled by Mr. Purshottam was as to the delay made by him in making his report to the Mamlatdar. As I have already mentioned his report did not reach the Mamlatdar until the 16th. The explanation given by this witness may be true and yet it cannot be said that this witness acted with due diligence in this matter. One remarkable feature of this case has been the unwillingness of the witnesses to come forward with their statements and to mention all material particulars as to the part played by all the accused in regard to this offence. It is not difficult to see that there is hesitation on the part of some of them to implicate the Police Sub-Inspector or the Constables and the Sheristedar. On the other hand, if the contention of the defence is true that Mr. Joshi and the Police Patil (with whose evidence I will presently deal) had conspired to implicate the accused falsely the delay made by Mr. Joshi in forwarding his report becomes still more inexplicable. If he wanted to implicate the Sub-Inspector and the Sheristedar falsely one would obviously have expected him to make his report as promptly as he could. Besides, in the evidence of Mr. Joshi we see no justification whatever for assuming that he was actuated by any malice towards any of the accused. It is true that notwithstanding the order in question large quantity of prohibited goods has passed beyond Kodiyal into the Mysore territory and this became possible because Mr. Joshi was obviously not careful and diligent in seeing that the order was properly enforced. But the indifference in enforcing this order must unfortunately be attributed not only to Mr. Joshi but to the Sub-Inspector and the Mamlatdar as well. It is very much to be regretted that the public officers of this taluka whose primary concern it was to see that the order in question was obeyed apparently took no effective steps to stop the transport until this offence was discovered. But, as I have said, we are unable to find any malice

in the conduct of Mr. Joshi and are not prepared to hold that the statement which he made about the presence of the Police Constables has been deliberately made by him in order to make the case against accused No. 12 more probable.

The next witness is the Police Patil of Kodiyal. Like the Price Inspector he also refers only to the incident of the morning. He refers to the Police Constables, accused Nos. 13 and 14, as being present on the scene when the carts arrived at Kodiyal. This witness has come in for very severe criticism at the hands of the learned Advocates appearing for the defence because though he speaks only against accused Nos. 13 and 14 he had sent a telegram to the Price Inspector which implicates accused Nos. 11 and 12. This telegram which was sent by him from Harihar said that " Sheristedar, Police Sub-Inspector get groundnut seed carts rescued custody Valikar passed over bridge Mysore State after dark yesterday ". The telegram was sent from Harihar at 4-10 p.m. and was received at Ranebennur at 4-52. It is obvious that if this document is genuine it strongly corroborates the evidence of the Valikar and the Naka Karkun when they say that accused Nos. 11 and 12 went to Kodiyal and made it possible for the carts to proceed to Harihar. As against this witness it has been strenuously contended before us that he is on inimical terms with the Police Sub-Inspector and it has been brought to our notice that there was some case about *ganja* in Kodiyal in which the Police Sub-Inspector was dissatisfied with the conduct of the Police Patil and had reprimanded him. The Police Patil denied that he had been reprimanded by the Sub-Inspector, but this fact was admitted by the Valikar. We are, however, not satisfied that the incident about the reprimand even if it is true would justify the inference that the Police Patil would have the courage to implicate the Sub-Inspector falsely. Besides, this argument is based upon the further assumption that the telegram which the Police Patil sent was the result of a conspiracy between himself and Mr. Joshi since it is suggested that the Police Patil first went to Ranebennur and saw Mr. Joshi and then proceeded to Harihar and despatched the telegram. It may be pointed out that the Police Patil stated that he had sent the telegram at about 10 or 11 a.m., though in fact the telegram was despatched at 4-10 p.m. Why the telegram was sent as late as 4-10 p.m. has been explained by the Police Patil himself. But apart from that we are not at all prepared to assume that Mr. Joshi took part in any such conspiracy as alleged and we are satisfied on the whole that the telegram correctly and truly represents what the Police Patil was told by the Valikar when he returned to Kodiyal on the night of the 10th. It has also been contended that the Police Patil did not mention to the Mamlatdar anything about this incident when the Mamlatdar visited Kodiyal the next day. But the failure of the Police Patil to mention this incident to the Mamlatdar even though he had sent a telegram to Mr. Joshi implicating accused Nos. 11 and 12 rather shows absence of conspiracy. The conduct of the Police Patil supports the conclusion to which we have been driven in this case that some of the witnesses were not eagar to implicate some of the accused in this case. The direct evidence of this witness, however, implicates accused Nos. 13 and 14. He does not refer to accused Nos. 1 and 2.

The third witness is the Valikar of Kodiyal. He refers to the presence of accused Nos. 13 and 14 in the morning and to the presence of accused Nos. 11 and 12 in the evening. He was told by the two latter accused persons that they had come in person and would explain to the Police Patil and had asked him to allow the carts to proceed. Initially the Valikar refused to permit the carts to proceed on the ground that the Police Patil had ordered him to keep them under attachment and but for the presence of accused Nos. 11 and 12 he would not have allowed the carts to go ahead. No motive has been suggested why this witness should falsely implicate accused No. 11 and the ground of reprimand set out by accused No. 12 appears to us to be wholly insufficient to justify the inference that he has falsely implicated him.

Then we have the evidence of the Naka Karkun who refers to the presence of accused Nos. 11, 12 and 13 in the evening at Kodiyal. Accused No. 13 went to this witness and told him that accused Nos. 11 and 12 desired that he should permit the carts to proceed. According to his evidence, after the Valikar permitted the carts to go across the bridge they came near the Naka and this witness stopped them at the Naka. He was, however, induced to allow them to go ahead on the representations made by accused Nos. 11 and 12. As against this witness there is no reason suggested why he should come forward to swear against persons who occupy comparatively important positions. In his cross-examination it has been brought out that he was not aware of this order and did not take steps to prevent the export of groundnut seeds. That, however, does not much matter so far as the present case is concerned. It may be that like the higher officials of this taluka even this clerk was either indifferent or unwilling to enforce this order.

The next witness on whose evidence the prosecution rely is Dod Kotrappa. He refers to the presence of accused Nos. 11 and 12 in the evening when the carts were allowed to go to Harihar. But this witness is an old man and has made some inconsistent statements. In his cross-examination he stated that the Price Inspector had told him that he should say that the Police Sub-Inspector and the Sheristedar had come. We are not satisfied that this statement is true. But on the whole we would be unwilling to accept the evidence of this witness as reliable.

The last witness on whose evidence reliance has been placed is Chikkanna who refers to the journey of accused Nos. 1 and 2 from Ranebennur to Kodiyal and Harihar in the evening of the 10th of February. When he reached Kodiyal he was told by accused Nos. 1 and 2 to go back to Harihar on foot. This witness also shows that accused Nos. 1 and 2 had gone to Harihar on the morning of the 10th, taken the car driven by this witness to Ranebennur and had returned to Kodiyal from Ranebennur the same evening. Both the Courts below thought that this witness was trustworthy. His evidence clearly shows the presence of accused Nos. 1 and 2 in the morning at Harihar and of accused No. 2 in the evening at Kodiyal. It is difficult to see why accused Nos. 1 and 2 should have gone to Harihar early in the morning unless it be that they had accompanied the carts to Kodiyal and had rushed to Harihar after the carts had been attached in order that they should take further steps in the matter.

The learned Sessions Judge has taken the view that the evidence of Mr. Joshi and that of Chikkanna was enough to bring home the offence to accused Nos. 1 and 2. Though he had criticised the evidence of Mr. Joshi in the earlier part of his judgment he did not feel any hesitation in treating his evidence as satisfactory as far as accused Nos. 1 and 2 were concerned.

As against accused Nos. 1 and 2 there is the further evidence which shows that they sold groundnut seeds at Harihar the next day. The evidence of the clerk of accused No. 1 shows that on 11th February 1944 Rs. 5,165-7-3 were credited in the account books as sale proceeds of groundnut seeds according to the instructions of accused No. 1. Curiously enough the entry does not refer to whom the groundnuts were sold and where. An attempt was, however, made to show that these groundnut seeds had been purchased by accused No. 1 some days before the 11th at Davangeri in Mysore State and had been sold to one Sharanappa at Davangeri. It was contended that the sale to the Bharat Mill on which the prosecution relied against accused No. 1 was really a transaction between Sharanappa and the Bharat Mill. The accounts of the Bharat Mill referred to one Sharanappa and the case for accused No. 1 was that it was the goods sold by accused No. 1 to Sharanappa on the 6th or 7th of February that were sold by Sharanappa to Bharat Mill on the 11th February. For this purpose Sharanappa was examined. But the answers he gave in cross-examination completely demolished the case for the defence. He admitted that he had not seen the seeds on the 6th or 7th, had not seen the bags at Davangeri and he

was content to make the statement that the accused had told him that the goods had arrived at Davangeri not on 6th or 7th, but on 11th or 12th of February. This witness did not produce any extracts from his accounts to show that any transaction took place between him and accused No. 1 as pleaded by the accused. We are satisfied that the reference to Sharanappa made by accused No. 1 in reference to his dealings with the Bharat Mill on the 11th February was a mere device intended to cover his part in the transaction. The case of accused No. 2 is somewhat similar. He is also shown to have sold 118 bags the next day at Harihar. Besides, there is the evidence of Mr. Joshi and Chikkanna which both the Courts below thought sufficiently proved the case against him. It is thus clear that the prosecution have proved their case against accused Nos. 1 and 2.

The position of accused No. 11 is not very different from that of accused Nos. 1 and 2. Both the Courts below have held the material facts proved against him, the point on which the learned Sessions Judge differed from the trial Magistrate consisting only in the inference drawn by the learned Sessions Judge that this accused credulously accepted the explanation given by the merchants and allowed them to take the seeds to Harihar. As I have already mentioned the report made by the Mamlatdar shows that this accused took part in permitting the transport and though this statement was challenged by this accused in his own statement made the next day, we are not prepared to attach any value to that denial. In fact the facts set out by this accused in the said statement themselves clearly prove that this accused went with the Sub-Inspector to Kodiyal and actually saw that the goods were transported. It is true that he claims to have sat below a tree away from the place where the carts were standing. But he refers to the talk between the Police Constable and the Valikar and in view of the evidence to which I have already referred we feel no hesitation in holding that he knew about the order and was fully conscious that the order was being violated. The explanation that he was a simpleton, and was taken in by the merchants appears to us to be wholly unfounded.

Before proceeding to deal with the case of accused No. 12 it is necessary to decide whether the statement made by accused No. 11 before the Assistant Collector on the 20th February could be used against accused No. 12. As I have already mentioned in the said statement he refers to the presence of accused No. 12 at Kodiyal in the evening of the 9th and in fact suggests that it was accused No. 12 that took him to that place. He also refers to the transport of the goods in the carts to Harihar, though he says that he and accused No. 12 were somewhat away from the carts under a tree. Mr. Purshottam has contended that this statement cannot be used against accused No. 12 and in support of this contention he has relied upon a decision of the Privy Council in *Narayana Swami* v. *Emperor*, (1939) 41 Bom.L.R. 428. Dealing with the question as to the admissibility of the statements made by one accused against another when the two are tried jointly for the commission of an offence it was pointed out by their Lordships that in their view " no statement that contains self-exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence." It is obvious that a statement made by one accused can be used against another only if such statement amounts to a confession. In view of the fact that the statement made by accused No. 11 clearly contains self-exculpatory recitals the learned Government Pleader has attempted to contend that in spite of the said exculpatory recitals the statement does amount to a confession particularly because the charge against both accused Nos. 11 and 12 is that of abetment under rule 121 of the Defence of India Rules. We are, however, not impressed with this argument. Having regard to all the recitals contained in the statement we are not prepared to hold that it is a confession which could be used against accused No. 12 (*vide Emperor* v. *Santya Bandu*, [1909] 11 Bom.L.R. 633).

case against accused No. 12 reliance has been placed on his behalf on the statements made in the Station Diary as also the Weekly Diary showing his movements at the material time. From these documents it would appear that on the 9th the accused was in charge of the Police Station at Ranebennur from 5 to 8-30 p.m. and that from 12 mid-night to 8 a.m. on the 10th as well as from 8 a.m. to the mid-night of that day two other Head Constables were in charge. The entry shows that the Sub-Inspector's camp was on tour. The Weekly Diary of the Sub-Inspector shows that he left Ranebennur at 10-30 a.m. on the 9th and went to Karur, 10 miles away, where he was till 4 p.m. Then he went to Chalgeri, one mile away, at 4-30 and after doing some work there returned to Karur at 5-30 p.m. He halted at Karur, till mid-night and then went to Waldar, two miles away, where he checked criminal tribes members and left at 8 a.m. arriving at Ranebennur at 10-30 a.m. when he took over charge of the Police Station. Incidentally it may be pointed cut that the villages which he visited are nearer Kodiyal than Ranebennur itself. But the main argument advanced on his behalf has been that the prosecution story that he accompanied accused No. 11 in a car to Kodiyal from Ranebennur should be taken to be disproved by the entries in the Station Diary and the Weekly Diary. Apart from the fact that the statements in the Weekly Diary are made by the accused himself, it seems to us that those statements do not in any way make the prosecution case impossible since it was not at all unlikely for accused No. 12 to have returned to Ranebennur from Karur at 5-30 p.m. In fact even if he had come to Ranebennur to take his meals at his place for instance the entry in his Weekly Diary would still show that he was at Karur until he left the place for Waldar. Accused Nos. 1 and 2 knew that the carts had been stopped and they were naturally taking steps to persuade the Valikar to allow the carts to go to Harihar. Accused No. 11 undoubtedly was at Kodiyal in response to the appeals made by accused Nos. 1 and 2. It seems to us highly probable that accused No. 12 must have had a hand in this matter since accused No. 11, who is merely a Sheristedar of the Mamlatdar, would not, we think, have the courage to set at nought the orders of the Price Inspector. But apart from probabilities it seems to us impossible to believe that the Valikar and the Naka Karkun would dare to implicate an important officer like accused No. 12 if the story that they gave was not true. We see no reason to disbelieve their evidence, and, as I have already pointed out, even if the entries to be found in the two diaries are accepted as true, the evidence of the said entries cannot have the effect of shewing that the evidence of the two witnesses was untrue. The official record of the present accused, it is said, is very good, and it is argued that it is very unlikely that this accused would get mixed up with this affair particularly when he knew that the carts had been attached. We have given anxious consideration to the question as to whether accused No. 12 was involved in this affair or not and having considered the evidence and the circumstances of this case we have come to the conclusion that the prosecution case against him is proved.

On behalf of accused Nos. 13 and 14 reliance was placed on the entries in the Station Diary showing what duties they were performing at the material time. What I have already stated about similar entries on which accused No. 12 relied applies with equal force to the entries on which reliance is placed by accused Nos. 13 and 14. Besides, we think it would not be advisable to treat the timings mentioned in these entries as strictly accurate. Both the accused attended the roll call at 9 p.m. on the 9th and 10th and the patrol book gives the various duties they performed on the two respective days. It is not, however, mentioned what accused No. 13 did on the night of the 9th. The next day from 8 to 12 a.m. and from 3 to 8 p.m. he has done the barrier and stand duty. Similarly about accused No. 14; he attended the roll call at 9 p.m. on both the dates and on the 10th from 12-15 a.m. to 5 a.m. he has done the night round duty. Thereafter till noon he was in office and from 2 to 8 p.m. he did the round duty visiting toddy shops. It is thus clear that these entries do not at all make it impossible for the accused to have been present at Kodiyal as sworn to by the witnesses.

n the whole even as regards these two accused we are satisfied that the rosecuton case is proved against them.

Thus the conduct of the accused in taking part in transporting or helping the transport of the goods which had been attached by the Price nspector expressly on the ground that the transport of the goods was prohibited clearly shows that all the accused must have at least then known about ne order and in spite of the said knowledge they took part in facilitating he transpert. In our opinion the prosecution case against accused Nos. 1, , 11, 12, 13 and 14 is thus clearly proved. We accordingly convict accused Nos. 1 and 2 of the offence punishable under rule 81 (4) of the Defence of ndia Rules read with the order passed on the 27th September 1943. We lso convict accused Nos. 11, 12, 13 and 14 of the offence punishable under ule 81 (4) read with rule 121 of the Defence of India Rules.

That raises the question of sentence. We have considered the whole vidence in this case and have been unable to find any extenuating circumtance in favour of accused Nos. 1, 2, 11 and 12. We think it is necessary to lirect that accused No. 1 should undergo rigorous imprisonment for nine nonths and pay a fine of Rs. 1,000 or in default further rigorous imprisonnent for 3 months. Accused No. 2 is ordered to undergo rigorous imprisonnent for nine months and to pay a fine of Rs. 750, or in default further rigorous imprisonment for 2½ months. Accused No. 11 has in our opinion played a somewhat minor part since we think that he merely assisted the Sub-Inspector at his instance and under his instructions. We accordingly sentence him to six months' rigorous imprisonment and direct him to pay a fine of Rs. 500 or in default two months' rigorous imprisonment. The case for accused No. 12 calls for a deterrent sentence. It is unfortunate that this young officer should have fallen a prey to avarice to such an extent that he took part in abetting the transport of the goods in question in spite of the fact that he knew that the said goods had been attached by the Price Inspector. We think that the ends of justice require that we must direct accused No. 12 to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000 or in default to undergo further rigorous imprisonment for six months. The case of accused Nos. 13 and 14 may in our opinion be treated somewhat leniently. They were clearly acting under the orders of accused No. 12 and had probably not much option either. We think it would be enough to direct that each one of them should undergo rigorous imprisonment for one month.

The order of acquittal in favour of accused Nos. 7 and 9 is affirmed and the appeal against them is dismissed.

By the Court,

(Signed) S. H. BELAVADI,

Deputy Registrar.

Exd. by :—G. M. M.

Read by :—S. G. C.

[redacted]

True Copy

S. H. Belavadi

Deputy Registrar

the 18th day of December 1944

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

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Judgment recorded by the High Court in Criminal Appeal No. 271 of 1949 (By the Government of Bombay) in the case of Rex Vs. Ganesh Yeshvant Watve.

Mr. H.M. Chokshi, Government Pleader for the Appellant. The Government of the Province of Bombay and Mr. S.C. Patwardhan with Mr. A.C. Kotwal. Advocate for the Respondent.

Coram: Weston and Shah JJ.

21st September 1949

Oral Judgment: (Per Shah J.):-

This is an appeal by the Government of Bombay against the order of acquittal passed by the Special Magistrate, First Class, Hubli, acquitting the accused Ganesh Yestvant Watve of an offence under section 161 of the Indian Penal Code. The accused was charged before the learned Magistrate with having accepted Rs. 75/- as gratification other than legal remuneration on the 27th July 1947 from one Channappa Chavedappa as a motive for giving him a medical certificate required by him for producing in certain original proceeding contemplated to be taken by him.

The case for the prosecution was that the accused is a medical practitioner at Gadag. In the year 1943 he was appointed as an Honarary Medical Officer in charge of the Municipal dispensary at Gadag on an honorarium of Rs. 100/- per month. He was allowed private practice, but he was requi. ed to work as an officer in charge of the municipal dispensary subject to the rules framed by Government in that behalf. On the 27th June 1947 one Channappa Chavadappa was assaulted by certain persons with knives as a result of which he received severe incised injuries. Another person Timmappa Laxmappa, who was his companion, was also assaulted and he received certain minor injuries. The Police Sub-

Inspector of Gadag having received information, registered an offence under section 324 of the Indian Penal Code agains the assailants of Channappa and Timappa and sent on these two injured persons to the municipal dispensary at Gadag. They were treated by the accused. The complainant Channappa thereafter approached the accused with a request for a certificate regarding his injuries and the duration thereof on the representation that he desired to prosecute his assailants. But, according to the prosecution case, the accused told him that a certificate could not be given free and he demanded Rs. 75/- as gratification for giving such a certificate. Channappa pleaded his inability to pay such a large amount on account of his proverty, but the accused insisted upon the payment of Rs. 75/- before the certificate could be given. The complainant then went home and he consul ed some policeman, and he was advised to contact the Anti-corruption branch of the police department. Accordingly, Channappa and Timappa went to the Police Sub-Inspector of the Anti-corruption branch on the 27th July 1947 and told him of the demand made by the accused of a bribe of Rs. 75/-. The Police Sub-Inspector of the Anti-corruption branch gave Channappa marked Government currency notes in the presence of panchas and asked Channappa and Timappa to go and pay the amount to the accused. The amount in marked Government currency notes was paid to the accused at about 6 or 6-30 p.m. on the 27th July 1947. The accused took the money from Channappa and Timappa and put it in a coat which was hanging in the verandah of his house. The complainant then requested the accused to issue a certificate to the Sub-Inspector at Gadag. At that time a ~~xingk~~ signal being given by Timappa, the Police Sub-Inspector and the panch who were waiting arrived, and asked the accused to produce the money paid by Channappa and Timappa to him. After some hesitation the

the money, and a panchamama was made by the Police Sub-Inspector of the finding of the marked currency notes. After obtaining the necessary sanction from the superior officers, the Police Sub-Inspector sent up a charge sheet to the Court of the Special Magistrate, First Class, Hubli, against the accused for an offence under section 161 of the Indian Penal Code.

At the trial the accused admitted that he had received the amount of Rs. 75/-, this case however was that for the treatment of Channappa and Timappa, some medicines which were not available in the stock of the Municipal dispensary were requested, and he told them that he would be prepared to administer those medicines provided they agreed to bear the cost of those medicines. Both Channappa and Timappa agreed to pay the cost for these medicines. Thereupon the accused said, that he treated them according to the prescription papers, which were produced in the case. After Channappa and Timappa were discharged from the dispensary the accused asked them to pay the costs incurred for the extra medicines which he had supplied at his own costs and of which the approximate value according to him was Rs. 100/-. According to the accused, on the 27th July 1947 both Channappa and Timappa came to his residence and paid him Rs. 75/-, being the amount due by them towards the cost of the extra medicines used by him in their treatment. The accused said that he accepted the money and kept the amount in his pocket, and that he was there after arrested by the Sub-Inspector and a panchnama was made. He said that his appointment as an Honarary Medical Officer in charge of the Medical Dispensary at Gadag had created dissatisfaction among some of the members of the Gada Municipality and they had started an agitation that his private dispensary should be closed. The matter was taken to

his Surgeon General, who upheld the contention of the accused hat he could not be called upon to close his private dispensary; and, it was the contention of the accused, that it was y reason of his enmity that he was charged at the instance f some interested persons with having committed the offence f taking a bribe.

The prosecution examined both Channappa and Timappa the ivil Surgeon of Dharwar as well as the compounder Virbhadrapa, who assisted the accused in the Municipal dispensary at adag. Both Channappa and Timappa stated that the accused nsisted upon the payment of Rs. 75/- before any certificate ould be given to them, and that they had never agreed to pay his amount of Rs. 75/- towards the cost of extra medicines rocured by the accused for them for their treatment. Virbhad appa, the compounder, stated that on various days the ccused procured from his own dispensary or from outside the ospital certain medicines which were required for the treatent of Channappa and Timappa. He stated that Sulphanomide ower Cibazol and penicillin tablets were produced by the ccused from outside. He also stated that Lexine injections were also procured by the accused from outside but the rest f the medicines which were administered to Channappa and imappa were from the stock of the dispensary. The Civil urgeon stated in his examination-in-chief that a medical fficer was not expected to charge an in-patient for medicines brought from outside and administered to the in-patients. ut in his cross-examinat he admitted that there was no rule hich related specifically to medicines to be brought from utside for the treatment of an in-patient in medico-legal aid cases, nor, as he admitted he could enlighten the court n that question as regards the out-patients. He also admitted that if a medical officer brought medicines from

outside even without consulting the patient or his guardian to save his life and subsequently asked for charges, he could do so. On the evidence led before him the learned Magistrate was of the opinion that the evidence given by Channappa and Timappa was not wholly reliable, that at the time when Channappa was brought to the hospital he was in a very serious condition and he needed very prompt and careful treatment, and that both Chammappa and Timappa during the course of their treatment were given certain extra medicines and injections which were not available from the stock of th dispensary at Gadag. He held that there was nothing in the rules or in the terms of service which prohibited a medical officer from charging patients even in medico-legal cases for the use of the medicines procured from outside while he was treating such patients; and according to the learned Magistrate, the cost of such medicines used by the accused was approximately Rs. 36/-. The learned Magistrate was on these findings of the opinion that it was improbable that the accused demanded a bribe for giving a certificate but he was demanding the cost of extra medicines which he had used while treating Channappa and Timappa; and on that view the learned Magistrate held that the accused was not guilty of the offenc with which he was charged, and acquitted him. Against that order of acquittal the Government of Bombay have preferred this appeal.

The learned Government Pleader on behalf of the Governme has aruged that in this case it was not denied by the accused that the amount of Rs. 75/- was received by him; and that as it was admitted by the accused that he received the amount of Rs. 75/-, which was not legal remuneration which was payable to him, he was guilty of an offence under section 161 of the Indian Penal Code, unless he established

tively that the amount was paid to him in respect of a transaction which was independent of his official duties. In support of that contention the learned Government Pleade relied upon the term of section 4 of Indian Act II of 1947. Section 4 of Act II of 1947 provides:

> "Where in any trial of an offence punishable under section 161 or section 165 of the Indian Penal Code, i is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtai for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless contrary is proved that he accepted or obtained, or agreed to accept or obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

The argument of the learned Government Pleader is that the amount of Rs. 75/- was a gratification or a valuable thing within the meaning of section 4 of Act II of 1947, and havin been admitted by the accused as received by him, he had to establish that it was not paid to him as a motive or reward as mentioned in section 161 of the Indian Penal Code. In our opinion the evidence is not sufficient to hold that the amount of Rs. 75/- was received by the accused as gratification or a valuable thing as contemplated by section 4 of Act II of 1947. At the trial Court it was the case of the accused that this amount of Rs. 75/- was being paid to him in pursuance of the promise made to him by Channappa and Timappa to pay for the cost of extra medicines which had bee procured by him either from his dispensary or otherwise; and

that part of the case appears to be supported by the evidence of the compounder, Virbhadrappa, and the prescription papers which have been produced. It is not suggested by the prosecution that Cibazol, Penicillin tablets and sulphanomide powders, which according to Virbhadrappa, were not available in the dispensary, were part of the stock of the municipal dispensary. If, therefore, the evidence of Virbhadrappa that these medicines were procured by the accused from his own dispensary or from outside, it could not be expected that the accused was prepared or desired to make a gift of these medicines of comparitively substantial value; to the complainant. It is true that Channappa and Timappa have denied that they agreed to pay for any extra medicines which the accused said it would be necessary to administer to them. But we are not prepared to rely upon their denial and to hold that the statement of the accused supported as it is by evidence, which is both documentary and oral, must be untrue. We accept the case of the accused that he procured medicines for being administered to Channappa and Timappa; and it is not unlikely that the accused must have insisted upon a promise from the persons for whose benefit these medicines were going to be used that they were to pay for those medicines. The accused was under the terms of his service entitled to carry on private practice, and the only condition of his service, subject to which he was entitled to carry on private practice, was that private practice should not interfere with his duties at the municipal hospital. Consequently the mere receipt of money by him from a person whom he had treated as a patient cannot be a ground for holding that he had received the amount by way of illegal gratification. It also does not appear from the evidence on record that the accused was under any obligation

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to issue a certificate to a private complainant in a medico-legal case. It appears that the accused had sent one certificate on the 21st July 1947 which certified the injuries on Timappa. There is also another certificate on record of the case dated the 21st July 1947 which certified the injuries on Channappa and mentions the fact that he was discharged and was to be treated as out-patient on the 13th July 1947. These two certificates appear to have been sent by the accused to the police officer concerned, and there is no evidence to show that even after issuing the certificates and sending them to the police officer, who had recorded a cognizable offence, the accused was under an obligation to issue a further certificate to a private injured party. We do not think that there is any ground for holding that in insisting upon the payment of Rs. 75/- and receiving payment thereof amounted to an offence of receiving illegal gratification.

In the circumstances, we agree with the view taken by the learned Magistrate that it is not proved beyond reasonable doubt that the amount of Rs. 75/- was demanded and taken by the accused from Channappa and Timappa as gratification other than legal remuneration. If it is not established that the amount was demanded and taken as gratification other than legal remuneration, we think that the provisions of Act II of 1947 could have no application to the facts of the present case and there would be no prosumption arising against the accused that the amount was received as a motive or reward as mentioned in section 161 of the Indian Penal Code.

The order of acquittal passed by the learned Magistrate is, therefore, confirmed, and the appeal is dismissed.

By the Court,
Sd/- V.R. Gadkari,
Assistant Registrar.

Judgment recorded by the High Court in Criminal Revision Application No. 28 of 1948 (by Govt.) in the case of Rex Vs. Virbhadrappa Allappa Mandi.

The Government Pleader for the Government of the Province Bombay.

Mr. G.R. Madbhavi, Advocate for the accused.

Coram: Bavdekar & Dixit, JJ.

4th August 1948.

Oral Judgment (Per Dixit, J.):

This is an application by the Government of the Province of Bombay for enhancement of the sentence passed upon the accused in respect of an offence under section 161 of the Indian Penal Code. The learned Sub-Divisional Magistrate, First Class, Hubli, sentenced the accused to pay a fine of Rs. 150/- in default to undergo simple imprisonment for six weeks. The facts leading up to the prosecution of the accused seem to be these.

One Dattatraya is the proprietor of a hotel named Udaya Restaurant in Hubli. The accused in his capacity as inspector had to go to inspect the shop of Dattatraya. There is also another hotel in Hubli, which belongs to one Kantu Shanbhag. It appears that the accused told Dattatraya that he would have to give the accused illegal gratification of Rs. 10 per month, if he wanted to keep his shop open for business after 9 p.m.. The other shop keeper, Kantu, was being threatened by the accused with prosecution for not filling in the muster roll of his employees from 1st August 1946 to 11th August 1946. It appears also that the accused had shown his inclination to hush up the matter by accepting illegal gratification. So the

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So the complainant Dattatraya wanted to offer a sum of Rs. by way of illegal gratification on his own behalf, and a sum of Rs. 5 on behalf of Kantu. For that purpose currency notes were brought, and a panch nama was made in the presence of the panch Shrinivas. After the making of the panch nama Dattatraya and the panch witness Shrinivas went to the office of the accused in the Municipality, and there the complainant paid the accused Rs. 10 in the presence of the panch witness, Rs. 5 on his own behalf, and Rs. 5 on behalf of the proprietor Kantu. After this, it appears that the complainant asked him to go to a hotel in order to take tea, and while proceeding to the hotel, they were met by the Inspector, Anti-Corruption Branch. The person of the accused was searched, and the marked notes were found upon his person. The accused was subsequently prosecuted and convicte

If the evidence of the panch is believed, there is no doubt that the accused had committed the offence with which he has been charged. But Mr. Madbhavi on behalf of the accused says that the evidence of the panch witness should not be believed. There is no good reason why the evidence of the panch, who seems to be an independent witness should be disbelieved. The explanation of the accused is that the ten rupees were planted in his pocket during his absence. Now, that explanation is a usual explanation, and the same has been disbelieved. If we believe the evidence of the panch witness, which we do, and having regard to the circumstances which have been disclosed in the evidence, there is no doubt that the accused is guilty of the offence, and the sentence which the Magistrate imposed upon him is a fine of Rs. 150. The sentence of fine of Rs. 150 is, in our opinion, inadequate. In cases like these. a much more severe

sentence is called for. We accordingly enhance the sentence and we direct that the accused do suffer rigorous imprisonment for a period of six months in addition to the payment of fine which has already been imposed upon the accused. The rule will, therefore, be made absolute.

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By the Court,

Sd/- S.H. Belavadi

Deputy Registrar.

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